

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-22906-Civ-COOKE/GOODMAN

BARBARA HOOVER,

Plaintiff,

vs.

NCL (BAHAMAS) LTD., A Bermuda
Company d/b/a Norwegian Cruise Line,

Defendant.

ORDER ON MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment (ECF No. 22). Plaintiff filed an Opposition to Defendant's Motion (ECF No. 33) and Defendant filed a Reply to Plaintiff's Opposition (ECF No. 39). Thus, the Motion is fully briefed and ripe for review. The Court has carefully considered the Parties' motion papers, the record, and the relevant legal authorities. For the reasons set forth herein, Defendant's Motion is **DENIED**.

I. BACKGROUND

This action arises from the injuries Plaintiff Barbara Hoover suffered while she was a passenger aboard Defendant NCL LTD.'s cruise ship, the *NCL Bliss*. On August 7, 2018, Plaintiff, her husband, her sister, and her brother-in-law went on an excursion off the vessel when the *NCL Bliss* docked on a scheduled stop during the cruise. *See* ECF No. 32-2 at 13. It rained that morning while they were out on the excursion, but it had stopped raining before they returned to the *NCL Bliss*. *Id.* at 21. Approximately an hour or an hour-and-a-half after they returned to the vessel, Plaintiff and her brother-in-law went up a stairway between two decks to see what the weather was like at the time. *Id.* at 23. Few moments later, Plaintiff and her brother-in-law headed back down the same stairway they had taken up. *Id.* On her way down the stairs, Plaintiff slipped on one of the steps and fell down the rest of the stairway. ECF No. 32 at 1. This incident caused injuries to Plaintiff's elbow, hip, and back. Plaintiff subsequently brought this five-count Complaint, alleging negligence in

all five counts. *See Compl.* ECF No. 1. Plaintiff also alleges that she has also suffered economic, medical, and psychological damages. *Id.* at 11. Defendant now moves for summary judgment, arguing that: (i) the alleged dangerous condition was open and obvious to Plaintiff; (ii) Plaintiff cannot prove that NCL had actual or constructive notice of the allegedly dangerous condition; and (iii) Plaintiff has failed to provide evidence to support a claim for negligent design. *See* ECF No. 22.

II. LEGAL STANDARD

“A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a). “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* In reviewing a motion for summary judgment, the Court is “required to view the evidence and all factual inferences therefrom in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in favor of the non-movant.” *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013) (quoting *Skop v. City of Atlanta*, 485 F.3d 1130, 1143 (11th Cir. 2007)). Importantly, “at the summary judgment stage the judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter,” but only “to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

III. DISCUSSION

A. Open and Obvious Condition

There are material questions of fact as to whether the stairway presented an open and obvious danger. NCL argues that it is not liable for Plaintiff’s injuries because the alleged dangerous condition was open and obvious to Plaintiff. *See* ECF No. 22 at 7. “[U]nder federal maritime law, an operator of a cruise ship has a duty to warn of known dangers that are not open and obvious.” *Frasca v. NCL (Bah.), Ltd.*, 654 F. App’x 949, 952 (11th Cir. 2016) (citing *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1237 (S.D. Fla. 2006)). In deciding whether a dangerous condition is open and obvious, the Court must determine “whether a reasonable person would have observed the condition and appreciated the nature of the condition.” *Aponte v. Royal Caribbean Cruise Lines, Ltd.*, 739 F. App’x 531, 537 (11th

Cir. 2018). Consequently, the Plaintiff's subjective observations are irrelevant in this determination.

Here, Plaintiff, her husband, her sister and brother in-law returned from an excursion off the ship shortly before the incident. After they returned to the ship, Plaintiff and her brother-in-law went up the stairs between two decks to check on the weather. ECF No. 32-2 at 26, 27. Deciding that the weather was not conducive for their plans, they returned down the same stairway. *Id.* It was on the trip down the stairway that Plaintiff fell and sustained some injuries. Both Parties agree that it had rained that morning, and that Plaintiff observed that the steps were wet on her way up the stairs. *Id.* at 24. Surely, a reasonable person under the same circumstances would have perceived and appreciated that the stairs would be wet, perhaps even wetter than usual, because of the weather conditions earlier that day. However, here, Plaintiff has introduced expert testimony suggesting that the different levels of available traction between the metal nosing on the stairs and the rest of the stairs, which were made of teak wood, may have made the stairway unreasonably unsafe. *See* ECF No. 32-3 at 6. Plaintiff also testified about the amount of puddles of water she discovered were on the stairs after she fell. Given these facts, a reasonable jury could conclude that the extent of danger posed by the stairway was not open and obvious. *See Frasca*, 654 F. App'x at 953.

B. NCL's Notice

NCL also argues that Plaintiff cannot prove that it had actual or constructive notice of the alleged dangerous condition; thus, it cannot be held liable. ECF No. 22 at 12. However, NCL's cooperative representative testified that at least four passengers have had incidents on the same staircase between May 17, 2018 and June 30, 2018—all before Plaintiff's incident. ECF No. 32-6 at 20-21; 22-24. Additionally, the notes taken at a Shipboard Safety and Health Committee meeting, held on August 12, 2018, show that there were some concerns about the slipperiness of the staircase in question. ECF No. 32-9 at 3. Although the details on the prior incidents are thin, the Court finds that the evidence presented by Plaintiff is just enough of a triable issue of fact regarding whether NCL had actual or constructive notice that these stairs, when wet, presented a dangerous condition. Summary judgment on this issue is therefore inappropriate.

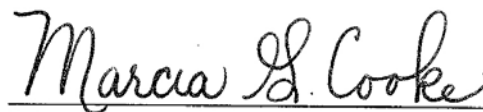
C. Plaintiff's Negligent Design Claim

Lastly, NCL argues that it is entitled to summary judgment on Plaintiff's negligent design claim because "Plaintiff has shown no evidence indicating NCL designed, constructed, or selected materials for the subject staircase." ECF No. 22 at 10. Contrary to NCL's argument, liability based on negligent design requires Plaintiff to produce evidence that the Defendant "actually created, participated in *or approved*" the alleged improper design. *Groves v. Royal Caribbean Cruises, Ltd.*, 463 Fed. App'x 837, 837 (11th Cir. 2012) (emphases added). Here, Plaintiff has provided enough evidence to create an issue of material fact as to whether NCL approved the design of the stairway at issue. Although NCL's representative skirted around providing a direct answer as to whether NCL approved the design in question, a reasonable jury could find that, based on his responses, NCL did in fact approve the design. *See* ECF No. 32-6 at 17-19. Thus, summary judgment is inappropriate at this stage.

IV. IV. CONCLUSION

For the reasons discussed above, Defendant's Motion for Summary Judgment (ECF No. 22) is **DENIED**.

DONE and ORDERED in chambers at Miami, Florida, this 29th day of September 2020.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
Jonathan Goodman, U.S. Magistrate Judge
Counsel of record